

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE,
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW); and
MARTIN LAMER, JOHN YASSO, KIM
TASKILA and RONALD GARDNER, for
themselves and others similarly-situated,

Plaintiffs,

Case No. 11-cv-14630

v.

U.S. District Judge Denise Page Hood

TRW AUTOMOTIVE U.S. LLC,

Defendant.

PLAINTIFFS' RENEWED MOTION FOR SUMMARY JUDGMENT

BRIEF

CERTIFICATE OF SERVICE

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PLAINTIFFS' RENEWED MOTION FOR SUMMARY JUDGMENT

Plaintiffs filed suit under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001 *et seq.*, challenging TRW's reduction of collectively bargained retirement healthcare benefits based on the claim that their benefits were vested under ERISA.

This Court previously denied Plaintiffs' motion for summary judgment "without prejudice" at the same time it granted TRW's motion to compel arbitration with the proviso that: "Any party may file a motion to reopen the case after the arbitration is concluded." Docket No. 26, page 7. Plaintiffs appealed this Court's decision but also complied with it and won the arbitration. The arbitrator found as a matter of CBA law (at page 22) that the "retirees have a vested right to lifetime hospital-medical-surgical insurance coverage by TRW." The decision is attached to Docket No. 34 as Exhibit 5. Plaintiffs, having dismissed their appeal and this Court now again having jurisdiction, renew their motion for summary judgment that their health benefits are vested under ERISA.

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BRIEF IN SUPPORT

LOCAL RULE 7.1 OF ISSUE

Whether Plaintiffs are entitled to a judgment that their benefits are vested under ERISA.

LOCAL RULE 7.1 STATEMENT OF APPROPRIATE AUTHORITIES

1. Collectively-bargained retirement healthcare promises are “welfare benefit plans” under the Employee Retirement Income Security Act (ERISA); broken retirement healthcare promises are “also a violation of ERISA.”

Armistead v. Vernitron, 944 F.2d 1287, 1298 (6th Cir. 1991)

Maurer v. Joy Technologies, 212 F.3d 907, 914 (6th Cir. 2000)

Schreiber v. Philips Display Components, 580 F.3d 355, 363 (6th Cir. 2009)

2. Once vested, promised retirement healthcare may not be unilaterally modified without retiree consent.

Allied Chemical Workers v. PPG, 404 U.S. 157, 182 n.20 (1971)

Yolton v. El Paso Tennessee Pipeline, 435 F.3d 571, 579 (6th Cir. 2006), *cert. denied* 549 U.S. 1019 (2006)

Schreiber v. Philips Display Components, 580 F.3d 355, 363 (6th Cir. 2009).

FACTS

The underlying facts are set forth in detail in the arbitrator's 26-page decision and in plaintiffs' earlier summary judgment motion and brief and in the declaration of Marty Lamer and the exhibits attached thereto. Docket No. 34, Exhibit 5 and Docket No. 9. Plaintiffs incorporate them by reference. The only potentially additional relevant facts are that plaintiffs have since winning the arbitration on multiple occasions requested in writing that "TRW agree to provide the retirees with written assurance that the benefits are lifetime" and that TRW has not done so. See the declaration of William Wertheimer that accompanies plaintiffs' reply brief in support of their motion for attorney fees and the 7 August 2013 letter attached thereto. Docket No. 38.

ARGUMENT

Plaintiffs incorporate by reference the arguments they made in their earlier summary judgment motion and brief as to the merits of their ERISA claim. Docket No. 9.

This Court in its decision ordering arbitration premised it on the applicability of the presumption that national labor policy favors arbitration even for retirees from a long closed plant. Docket No. 26, page 3. Plaintiffs having withdrawn their appeal of that decision now accept it as the law of this case. Nothing in that national labor policy would support this Court now failing to provide these retirees with the protection of a federal court judgment declaring that their benefits are vested under ERISA. This is particularly so here where TRW has refused (after losing the arbitration that it sought) to provide the retirees with written assurances that their benefits are lifetime. Unless this Court grants this motion, TRW (a serial ERISA offender as discussed in the attorney fee briefing in this case and in the USW case before Judge Drain referenced therein) will be free to reduce the benefits again, or eliminate them entirely, knowing that worst case for TRW the 400+ retirees will file grievances and at some undetermined future date again get the benefits that the arbitrator correctly found were theirs restored.

CONCLUSION

This Court found that TRW was contractually entitled to have the retirees' claims arbitrated, not litigated. The retirees complied with this Court's decision, obtaining an arbitration decision that their benefits were vested under the CBA. This Court should now find that these retirees are statutorily entitled to a judgment that their benefits are vested under ERISA, not just the CBA. The retirees respectfully request that this Court grant their motion for summary judgment.

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CERTIFICATE OF SERVICE

I hereby certify that on 24 October 2013, I caused the foregoing paper to be electronically filed with the Clerk of the Court using the ECF system that will send notification of such filing to all parties of interest participating in the CM/ECF system.

s/William Wertheimer
William Wertheimer